IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE, JURISDICTION

CRIMINAL APPLICATION NO.5880 OF 2005

The State of Maharashtra (Through Ulhasnagar Police Station)	)	APPLICANT (Org.Complainant)

Versus

1. Hiralal Maganji Goyal, Aged:31 years, R/o above Shiv Shakti Electrical Shop, Khopoli, Tal.Khalapur, Dist. Raigad.	)	
2. Sanjay Kantilal Abhani, Aged:34 years, R/o Prabhu Niwas, Shivaji Chowk, Khopoli, Dist.Raigad.	)	
3. Nilesh Manilal Thakkar, Aged:35 years, R/o New Panvel, CIDCO Colony, Plot No.5/37, Room No.12, Dist.Raigad	)	RESPONDENTS (Orig.Accused Nos.1 to 3)

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Mrs.A.S.Pai, APP for the Applicant-State.
Mr.B.D.Joshi, Advocate for the Respondents.

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CORAM : D.G.DESHPANDE &
SMT.V.K.TAHILRAMANI, JJ.
DATED : MARCH 28, 2006.

ORAL JUDGMENT (PER TAHILRAMANI,J.)

. The applicant i.e. the State of Maharashtra has filed this application for leave to file an appeal against the order of acquittal passed by the learned 3rd Ad-hoc Additional Sessions Judge, Kalyan on 27th April, 2005 in Sessions Case No.1439 of 1996. By the said judgment and order, the learned Sessions Judge

acquitted the respondent Nos.1 to 3 i.e. original accused Nos.1 to 3 of the offences under Sections 366 read with 34 and 376(2)(g) of IPC.

2. The prosecution case, briefly stated, is that:

. The prosecutrix (P.W.2) was aged 20 years at the time of the incident. On 19th December, 1995 at about 1:45 p.m., the prosecutrix went outside her parlour to bring some change from a grocery shop adjacent to her parlour. At that time, one Maruti van was standing infront of the parlour. In the said van, respondent No.1 i.e. original accused No.1 Hiralal Goyal was sitting. He told the prosecutrix that his niece Geeta Goyal had called the prosecutrix for shopping. When the prosecutrix refused, immediately respondent no.1 caught hold of her hand and pulled her inside the van. Thereafter, respondent No.1 showed acid bottle to the prosecutrix and threatened that if she shouts, he would throw the acid on her face. The prosecutrix was frightened and she kept quiet. Thereafter, respondent No.1 brought one handkerchief near her nose, as a result of which she became unconscious. When she regained her consciousness, she found herself in a room, in which respondent No.1, his two friends, one old woman and one young woman were also present. One priest was also present in the room. On account of

threats, the prosecutrix was made to sign some papers. Thereafter, she was compelled to marry respondent No.1 Hiralal Goyal in the said room. At that time respondent No.2 Sanjay Abhani took the photographs of the marriage ceremony. Thereafter, respondent No.1 and his friends took the prosecutrix for dinner in a hotel. After returning back from dinner, respondent No.1 took the prosecutrix to a lodge namely "Welcome-in". There, respondent No.1 had forcible sexual intercourse with the prosecutrix. On the next day, the prosecutrix was taken to Lonawala in a jeep, where they stayed in a lodge for two days. Thereafter the prosecutrix was taken to Bangalore by train, where they stayed in a lodge for two days. Thereafter, the prosecutrix was taken to village Kumatha in Karnataka State. They stayed in the said village for two days. Thereafter, the prosecutrix was taken to Khandala. Thereafter the prosecutrix was brought by respondent No.1 to Khopoli Police Station on 7th January, 1996. In the meantime, on 28th December, 1995, a missing complaint has been lodged by P.W.3 Puran wherein suspicion was expressed against respondent No.1.

3. We have heard Mrs.A.S.Pai, learned APP for the applicant-State and Mr.B.D.Joshi learned Advocate for the respondents. We have perused the judgment and order passed by the learned Sessions Judge as well as

the evidence, which has been produced by the learned APP.

4. Mrs.A.S.Pai the learned APP has fairly submitted that as far as respondent Nos.2 & 3 are concerned, there is no material against them as far as Section 376(2)(g) or Section 366 of IPC is concerned.

5. As far as the accused No.1 abducting the prosecutrix is concerned, it is seen that the prosecutrix was 20 years old at the relevant time. She was running a beauty-parlour and it is her specific case that she went out of the beauty-parlour to get some change from the grocery shop near her parlour. However, this stand is contradictory to the stand taken by P.W.3 Puran, who is the father of the prosecutrix. P.W.3 Puran has stated that his wife told him that his daughter (prosecutrix) closed the beauty parlour and went somewhere without informing anything to anybody. If this statement of the father of the prosecutrix in the missing-report is considered, then the entire contention of the prosecutrix that she was pulled by the respondent No.1 in a Maruti van cannot be accepted. Thus, the version of the prosecutrix that respondent No.1 abducted her without her consent, does not appear to be reliable.

6. It is the case of the prosecution that a handkerchief was brought near the nose of the prosecutrix, due to which she became unconscious. Thereafter, she found herself in a room wherein there was a priest and some other persons. It is her case that she got married to respondent No.1 in a semi-conscious state. However, in her cross-examination the prosecutrix has admitted that the priest was present and he asked her her name, age and address and she gave answers to the questions put by the priest. These admissions of the prosecutrix are indicative of the fact that she was fully conscious at the time of the marriage. Moreover, the FIR also is silent on the fact that she was semi-conscious at the time when the marriage was solemnised with respondent No.1.

7. The prosecution has also brought on record the photographs (Exh.109 & Exh.110) which relate to the marriage of the prosecutrix with the respondent No.1. In these photographs the bride (prosecutrix) and bridegroom (respondent No.1) are seen garlanding one another in the presence of priest. Photograph (Exh.108) shows that the prosecutrix is laughing in the said photograph. Moreover, photographs (Exh.109, Exh.110, Exh.108 & Exh.105) all show that the

prosecutrix was standing independently without any help, which is indicative of the fact that she was fully conscious. Thus, the story of the prosecutrix that she was semi-conscious at the time of marriage, cannot be believed. Moreover, from the photograph Exh.108 it is difficult to believe that the marriage was against the will and wishes of the prosecutrix.

8. The prosecutrix has deposed that after the marriage the prosecutrix was taken by respondent No.1 to various places like Lonawala, Bangalore, village Kumatha in Karnataka State and Khandala. The said journeys were undertaken by train as well as vehicle like jeep. It has come in the cross-examination of the prosecutrix that during the journey from Lonawala railway station to Bangalore railway station, she had seen policemen. Had the prosecutrix really been forcibly abducted, she would have called-out to the policemen for help. However, she has not done so. Moreover, the prosecutrix has categorically admitted that during the entire journey from Lonawala, Kumatha and to Khopoli, she never tried to run-away. It has also come on record that at Khopoli, respondent No.1 was speaking on a telephone from a STD booth at that time, the prosecutrix was standing near him, however, she did not try to escape. It is also significant to

note that P.W.3 Puran, who is the father of the prosecutrix has admitted that when the prosecutrix arrived at Khopoli, respondent No.1 caused the prosecutrix to make telephone to P.W.3 Puran at Ulhasnagar. However, on telephone, the prosecutrix did not disclose anything to her father.

9. The evidence on record shows that the prosecutrix had sufficient opportunities to seek help from the Police or to run-away from respondent No.1. She had sufficient opportunity during her travel by train etc. and when she was in public places, to seek help and make complaint against respondent No.1. However, she has not done so. This makes the evidence of the prosecutrix that she was forcibly abducted, doubtful.

10. After the prosecutrix was brought back to Khopoli police station by respondent No.1, she was sent for medical examination. P.W.1 Dr.Kiran examined the prosecutrix. Dr.Kiran did not find any injuries on the body of the prosecutrix and on the external genitals of the prosecutrix. If at all there was forcible sexual intercourse on many occasions as claimed by the prosecutrix, which was against her will and wishes, the prosecutrix would have resisted, which would have

resulted in injuries on her body and private parts. Absence of injuries are indicative of the fact that the prosecutrix was a consenting party.

11. We have also noticed that when the prosecutrix was brought to Khopoli Police Station, her father P.W.3 Puran was also present. On being asked by the Police, the prosecutrix did not go with her father and she stated that she was married to respondent No.1 of her own free will. However, later on the prosecutrix has stated that the said statement was made under coercion by respondent No.1. We find it wholly improbable that when the father of the prosecutrix was present in the police station, she would still have fear in her mind, especially, when her father as well as police officers were present in the police station and on account of fear she gave such a statement. Moreover, P.W.3 Puran who is the father of the prosecutrix has admitted that with the permission of PSI Patole of Khopoli Police Station, he had a talk with his daughter in a room. From these facts, it is crystal clear that the prosecutrix had an opportunity to speak with her father confidentially in a room in the police station. In such a case, if she had really been forcibly abducted and she had been subjected to forcible sexual intercourse, she would have informed her father at the police station.

12. The learned Sessions Judge has given the above reasons as well as some other reasons for dis-believing the case of the prosecution. We do no want to overburden this judgment by repeating the other reasons here. We find that the view taken by the learned Sessions Judge is a reasonable and plausible view. It is well settled that if the order of acquittal could have been reasonably arrived at then the mere circumstance that the appellate court could have taken a different view would be no ground to interfere. In this connection, there are no dearth of authorities, but, to eschew prolixity we are only referring to one of them i.e. **1997 (1) Mh.L.J.770 State of Maharashtra Vs. Balram @ Nam Amarsingh Talwar.** It has been observed in para 12 of the decision in 1997 (1) Mh.L.J.770 that:-

> "12. At the very outset, we would like to point out that we are seized of the matter in an appeal against acquittal. It is well settled that unless appreciation of evidence is clearly unreasonable or the impugned order of acquittal is vitiated by some illegality, this court does not interfere in an appeal against acquittal. It is equally well settled that if the view of acquittal is a possible view then this Court does not interfere in spite of the fact that it may feel that had it been the trial Court, it may have taken a different view. We are fortified in our view by the decisions of the Apex Court reported in **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and AIR 1987 SC 1083 Tota Singh Vs State of Punjab.** We also feel that in this connection, it would be

pertinent to refer to the decision of the Apex Court reported in **1995(2) SCC 486, State of Punjab Vs. Ajaib Singh,** where in para 7, Their Lordships of the Apex Court observed thus:-

> " We agree that this Court is not precluded or the court hearing the appeal against acquittal is not prevented from examining and reappreciating the evidence on record. But the duty of a court hearing the appeal against acquittal in the first instance is to satisfy itself if the view taken by acquitting court exercising appellate jurisdiction was possible view or not. And if the court comes to conclusion that it was not, it can on reappreciation of evidence reverse the order."

13. In our view, the view of acquittal was a reasonable and possible view. There is no illegality or impropriety in the judgment passed by the learned Sessions Judge. In the circumstance, we find no merit in this matter and the same is dismissed.

(D.G.DESHPANDE,J.)

(SMT.V.K.TAHILRAMANI,J.)